

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

ARTHUR BRENNAN MALLOY,	)	
AIS, #101329,	)	
	)	
Petitioner,	)	
	)	
v.	)	CASE NO. 2:09-CV-964-TMH
	)	(WO)
DAVID WISE, et al.,	)	
	)	
Respondents.	)	

**MEMORANDUM OPINION AND ORDER**

Under applicable federal law, a petition for writ of habeas corpus filed by "a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the [convicting] State...." 28 U.S.C. § 2254(1)(b)(1)(A). On March 18, 2010, the court dismissed Malloy's habeas petition because he had failed to exhaust his state court remedies by filing a petition for certiorari in the appropriate state circuit court. Malloy now seeks relief from that judgment.

According to Malloy's FED R. CIV. P. 60 motion, he filed on January 6, 2011, a petition for writ of certiorari in the Circuit Court of Montgomery County, Alabama, challenging the action of the Alabama Board of Pardons and Paroles denying him a pardon. That court treated the petition as a petition for post-conviction relief pursuant to ALA. R. CIV. P. 32 and transferred the petition to the court of conviction. Malloy's attempts to challenge that transfer have not been successful. Thus, Malloy now claims

that he has exhausted his state court remedies, and this court should reinstate his habeas petition. Malloy is wrong because he overlooks the fact which is ascertainable from his own submissions that the original state court petition remains pending in the court to which it was transferred. Thus, Malloy has not satisfied the exhaustion requirement, and his FED R. CIV. P. 60 motion is due to be denied. Accordingly, it is

ORDERED that Malloy's FED R. CIV. P. 60 motion for relief be and is hereby DENIED.

Done this 8th day of December, 2011.

/s/ Truman M. Hobbs

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TRUMAN M. HOBBS  
SENIOR UNITED STATES DISTRICT JUDGE